

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	CC Docket No. 01-92
Developing a Unified Intercarrier)	
Compensation Regime)	DA 02-2436
)	
Petitions for Declaratory Ruling)	
Regarding Intercarrier Compensation))	
For Wireless Traffic)	

Reply Comments of Beacon Telecommunications Advisors, LLC

Beacon Telecommunications Advisors, LLC (Beacon) submits these reply comments in response to the Commission's Public Notice seeking comment in the above-captioned proceeding requesting comment on Intercarrier Compensation for Wireless Traffic.

Beacon is a regulatory, financial, and management consulting firm providing services to independent and tribally owned rural incumbent local exchange carriers (ILECs) throughout the United States. Beacon's clients are small and rural ILECs that are directly impacted by the issues encompassing intercarrier compensation and wireless traffic.

Summary of Opinion

Beacon strongly encourages the Commission to oppose the Petition filed on September 6th, 2002 by T-Mobile USA, Inc., Western Wireless Corp., Nextel Communications, Inc., and Nextel Partners, Inc. (CMRS Petitioners). In essence, the petition seeks to circumvent the CMRS Petitioners' obligation to compensate ILECs for the use of their network and facilities by misinterpreting language contained in, under the auspices of, and under the spirit of the Act.

Fair Compensation

Section 252 of the Telecommunications Act of 1996 calls for just and reasonable cost-based rates to be exchanged between interconnecting parties.¹ Whether the parties are directly interconnected or indirectly interconnected is not the issue in this proceeding. Instead, the overriding issue in this proceeding resides in the fairness of compensation that is reciprocated by each party when traffic is exchanged between CMRS providers and ILECs. In this regard, Beacon believes that in the absence of a duly negotiated interconnection agreement, wireless termination tariffs are a legally binding vehicle used to enforce payments made to ILECs by CMRS carriers. Support for this comes by way of Section 251(b)(5), in that “The duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications” is an obligation of all LECs.² Section 251(b)(5) does not mandate that interconnection agreements be filed, but instead that reciprocal compensation arrangements are established. Absent a good faith effort by CMRS providers to negotiate reciprocal compensation arrangements, as obligated to do under Section 251(c)(1)&(2) of the Act, ILECs must use other resources and avenues to obtain compensation due to them, and wireless termination tariffs are an appropriate means to that end.

Payment Issues and Plain Reading of the Act

Section 251©(1) explicitly states that, “The *requesting carrier* also has the duty to negotiate in good faith...”. In addition, Section 251©(2) states that ILECs have, “The duty to provide, for the facilities and equipment of any *requesting telecommunications carrier....*”. Clearly, the intent of the Act is for telecommunications carriers, including CMRS providers, to request interconnection and negotiate in good faith. As mentioned above, absent a good faith effort by carriers to negotiate, which is clearly the case in this proceeding, ILECs have no choice but to turn to other legal means of collecting fair and just compensation for use of their facilities. As a matter of general fairness and practical

¹ Section 252(d)(1) of the Telecommunications Act of 1996

concern in the telecommunications industry, it is common that carriers be compensated for use of their facilities. As Sprint points out in their comments, “Sprint agrees as a general matter, however, that providers of access services should be compensated for the use of their networks, regardless of whether they are ILECs, CLECs, or wireless carriers.”³ In addition, SBC Communications states, “a carrier....is entitled to compensation for the services it provides....”⁴ As is the intent of the Act and is also clearly expected as a matter of general fairness and common industry practice, LECs should be remunerated for the use of their network and facilities.

Bill & Keep versus Access Charges

The CMRS Petitioners state that indirectly interconnecting carriers often exchange traffic pursuant to a bill-and-keep arrangement, rather than an interconnection agreement, at least for mobile-to-land traffic.⁵ With this statement, the CMRS Petitioners’ motive can be inferred and understood for not desiring to compensate ILECs for use of their facilities, as follows: Since Section 252(d)(1)(a) mandates that network elements be “based on cost”, CMRS carriers will likely pay higher cost-based access rates to high-cost, wireline ILECs. In this regard, even if the balance of traffic is equal between CMRS and wireline carriers, there will likely be an [proper and lawful] imbalance of “just and reasonable” compensation paid between the two. It can therefore be deducted that while the CMRS Petitioners desire a bill-and-keep regime for the reasons stated above, they should rightfully be paying the appropriate rates and charges to originate and terminate calls onto an ILECs’ network. All carriers, including CMRS providers, that require access to an ILECs’ network are legally obligated to fairly compensate ILECs for use of their facilities if they are receiving benefit from using it. In any case, ILECs should be allowed to charge fair, just, and reasonable rates for use of their facilities until such time as an agreement is in place between negotiating carriers.

² Section 251(b)(5) of the Telecommunications Act of 1996

³ Sprint Comments, CC Docket No. 01-92, DA 02-2436, pg. 2

⁴ Comments of SBC Communications, pg.7

⁵ FCC Public Notice, DA 02-2436, Released 9/30/02, pg.1

Conclusion

For the foregoing reasons and documented substantiation contained therein, the Commission should not grant the Petition as brought forth by the CMRS Petitioners. Instead, the Commission should allow wireless termination tariffs to be filed in lieu of (and as an alternative for) reciprocal compensation arrangements to carry out the intention of the Act, as warranted in Section 251 and 252.

Respectfully submitted,

Beacon Telecommunications Advisors, LLC

[Filed Electronically]

Beacon Telecommunications Advisors
2055 Anglo Drive, Suite 201
Colorado Springs, CO 80918

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